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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,453	11/25/2003	Grant Hawthorne	14429.3US01	5983
23552	7590	06/30/2005	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			WILLIAMS, JAMILA O	
			ART UNIT	PAPER NUMBER
			-3722	
DATE MAILED: 06/30/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/723,453

Applicant(s)

HAWTHORNE ET AL.

Examiner

Jamila O. Williams

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on APPLICATION FILED 11-25-03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 13-19 and 23 is/are rejected.
- 7) ☒ Claim(s) 10-12 and 20-22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3-1-04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,6-9,15,16 are rejected under 35 U.S.C. 102(b) as being anticipated by 3,643,374 to Gunther et al. Gunther discloses a shaker comprising a base (14)), motor (34) and agitation assembly driven by the motor (32), a bobble head doll support (58); wherein the agitator is a rotating agitator and engages the underside of the bobble head support (figs 6,7); wherein the support comprises a rounded footprint (fig 3a); wherein the support and base comprise complementary alignment elements (bracket 64 fixed to base 14, see col 3 ln 9-10); wherein the shaking is variable; comprises a speed control (col 2 ln 37-41); wherein the speed control comprises a rheostat (col. 3 ln 17-20).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gunther et al. Gunther discloses all of the elements of the claims including that the frequency of the shaking motion is adjustable (col. 3 ln 17-20), Gunther does not however provide

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the range recited in claim 4. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to adjust the frequency (i.e. 20-50 cycles per minute) since it has been held that discovering the optimum or workable ranges involves routine skill in the art. *In re Aller*, 105 USPQ 233.

Claims 5, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gunther et al in view of 6,802,755 to Walker et al. Gunther discloses all of the elements of the claims but for the dampening element. Walker teaches using a flexible mounting bracket such as a spring to dampen the vibration of the doll during agitation and soft mounts (521) around the agitation assembly that inherently causes some dampening for the assembly. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use one or both of these features as taught by Walker with the shaker of Gunther for the purpose of sound proofing.

Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gunther et al in view of 5,316,516 to Saitoh. Gunther discloses all of the elements of the claims but for an actuator comprising a sound activator. Saitoh teaches having a toy including an external stimulus sensor that is activated in response to sound (see abstract last sentence). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the sensor of Saitoh with the shaker of Gunther for the purpose of having automatic activation of the shaker in response to sound.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gunther et al in view of 6,551,359 to Lui. Gunther discloses all of the elements of the claim including having a doll but the doll of Gunther does not have a bobbling head. Lui teaches having

a doll with a bobbling head. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the bobbling head of Lui with the doll of Gunther for the purpose of providing additional amusement to the user.

***Allowable Subject Matter***

Claims 10,11,12,20-22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. This is simply art of interest and was not used to reject any claims in this office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamila O. Williams whose telephone number is 571-272-4431. The examiner can normally be reached on Mon-Fri 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jw



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